

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters Civil
Citation Issued to Daryl Dean Magee;
Citation No. 124642

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on August 17, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on July 20, 2012.

Appearances: Conservation Officer Aaron Kahre, on behalf of the Department of Natural Resources (Department); Daryl Dean Magee, on his own behalf.

The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on August 17, 2012.

STATEMENT OF THE ISSUE

Did Mr. Magee violate Minn. Stat. § 84D.10, subd. 4(b),¹ by transporting a boat without the drain plug removed or opened?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF THE FACTS

On June 17, 2012, Conservation Officer Kahre and his partner Conservation Officer Thor Nelson were on patrol on Highway 72, just south of Waskish, MN, on the southern edge of Red Lake.

¹ Minnesota Statutes are cited to the 2010 Edition.

At approximately 10:15 a.m., they observed a car pulling a boat. They saw the plug was in the boat. They pulled the car over and identified Mr. Magee, from Waterloo, IA, as the driver. Mr. Magee was issued a citation.

Minnesota Statutes § 84D.10, subd. 4(b) states: "Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment."

Mr. Magee does not dispute the plug was in the boat and he does not dispute any of Officer Kahre's testimony. Mr. Magee testified he was on his way from his home in Iowa to go fishing in Canada. He documented that by including with his appeal a copy of his Canadian fishing license issued the same day he received the citation at issue in this case. He also testified that his boat was a "fish and ski" boat, and that the plug was pulled from the live well. Officer Kahre admitted he did not check the live well.

Mr. Magee also stated he did not know about the law. During the stop, Officer Kahre told Mr. Magee there were billboards and notices in the paper about the law. Mr. Magee never saw them.

Mr. Magee believes in the conservation laws, but feels a warning would have been more appropriate. He thinks a person should get one warning then, if caught again, be fined the maximum amount.

Based on the Summary of the Facts, the Administrative Law Judge makes the following:

CONCLUSION

Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Magee filed a timely appeal and request for hearing.

Mr. Magee violated Minn. Stat. § 84D.10, subd. 4(b), on June 17, 2012, by transporting a boat without removing or opening the drain plug.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to Daryl Dean Magee be AFFIRMED.

Dated: August 24, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

Mr. Magee admits that the drain plug was in his boat when he drove it from his home in Iowa, through Minnesota, to Canada. He does not believe the citation was appropriate because he was unaware of the law, he did not use the boat in Minnesota and because the plug was pulled from his live well.

Mr. Magee supports conservation laws and the efforts to deter the spread of invasive species. He believes in keeping the waters clean. However, he thinks that a warning would have been more appropriate under the circumstances.

The fact Mr. Magee never intended to use his boat in Minnesota is irrelevant. The question is whether the boat was being transported within the State of Minnesota. The uncontroverted testimony confirmed it was. The law is clear. It is a violation of the statute to have a plug in a boat while it is being transported within the State.

The citation was properly issued. It is within the discretion of the Commissioner to affirm the citation or to reduce the citation to a warning.

J. E. L.